

The House Committee on Judiciary offers the following substitute to HB 705:

A BILL TO BE ENTITLED

AN ACT

To amend Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process in civil practice, so as to provide for service upon persons residing in gated and secured communities; to provide for filing the return of service; to provide for state-wide registration of permanent process servers; to change certain provisions relating to process in civil practice; to provide for related matters; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 9-11-4 of the Official Code of Georgia Annotated, relating to process in civil practice, is amended in subsection (f) by adding a new paragraph (4) to read as follows:

"(4) SERVICE UPON PERSONS RESIDING IN GATED AND SECURED COMMUNITIES.

(A) As used in this paragraph, the term 'gated and secured communities' means multiple residential or commercial properties, such as houses, condominiums, offices, or apartments, where access to the multiple residential or commercial properties is restricted by a gate, security device, or security attendant that restricts public entrance onto the property; provided, however, that a single residence, farm, or commercial property with its own fence or gate shall not be included in this definition.

(B) Any person authorized to serve process shall be granted access to gated and secured communities for a reasonable period of time for the purpose of performing lawful service of process upon:

(i) Identifying to the guard or managing agent the person, persons, entity, or entities to be served;

(ii) Displaying a current driver's license or other identification; and

(iii) Displaying evidence of current appointment as a process server pursuant to subsection (m) of this Code section."

H. B. 705 (SUB)

SECTION 2.

Said Code section is further amended by striking subsection (h) in its entirety and adding a new subsection (h) to read as follows:

~~“(h) Return. The person serving the process shall make proof of service thereof to the court promptly and, in any event, within the time during which the person served must respond to the process file the proof of such service with the court in the county in which the action is pending within five business days of the service date. If the proof of service is not filed, the time for the party served to answer the process will not begin to run until such proof of service is filed. Proof of service shall be as follows:~~

- (1) If served by a sheriff or marshal, or such official's deputy, the affidavit or certificate of the sheriff, marshal, or deputy;
- (2) If by any other proper person, such person's affidavit;
- (3) In case of publication, the certificate of the clerk of court certifying to the publication and mailing; or
- (4) The written admission or acknowledgment of service by the defendant.

In the case of service otherwise than by publication, the certificate or affidavit shall state the date, place, and manner of service. Failure to make proof of service shall not affect the validity of the service."

SECTION 3.

Said Code section is further amended by adding a new subsection to read as follows:

"(m) *State-wide registration of permanent process servers.*

- (1) A person who files with the clerk of any superior court a motion stating that the movant has been a bona fide resident of the State of Georgia and engaged in the process serving industry for at least one year immediately preceding the motion and that the movant will faithfully serve process in accordance with the law, and who otherwise complies with this Code section and any procedures and requirements set forth in any rules or regulations promulgated by the Judicial Council of Georgia regarding this subsection shall, absent good cause shown, be appointed as a permanent process server by the superior court in the county where the motion is filed, and the clerk of the court shall ensure the appointment is registered with the Judicial Council of Georgia. Said registration shall be effective for a period of two years or until such approval is withdrawn by the court upon good cause shown, whichever shall first occur. The Judicial Council of Georgia shall maintain a register for this purpose. Such permanent process

1 server shall be entitled to serve in such capacity for any court of the state, anywhere
2 within the state.

3 (2) Any person seeking to become a process server with authority to serve process for
4 any court of the state shall, before being authorized to act as a permanent process server:

5 (A) Undergo a criminal record check by the Administrative Office of the Courts
6 through the Georgia and National Crime Information Centers;

7 (B) Pass a test to be administered by the Administrative Office of the Courts. The test
8 will measure the applicant's knowledge of state law regarding serving of process and
9 other papers on various entities and persons. The Administrative Office of the Courts
10 shall design said test, promulgate rules and regulations regarding the necessary fee to
11 cover the cost of the test and the administrative expense for processing the application,
12 and determine what constitutes passing under this subsection;

13 (C) Be approved by the Judicial Council of Georgia which shall review the application,
14 test score, criminal record check, and such other information or documentation as
15 required by the council. Upon review, the council shall make a fitness determination
16 in accordance with standards and procedures promulgated by the council as to whether
17 the applicant shall be approved for registration and authorized to act as a process server
18 in this state; and the council's determination shall be provided to the applicant in
19 writing. A copy of the council's determination shall be submitted with any motion
20 requesting appointment as a permanent process server; and

21 (D) Upon the court granting the applicant's motion, swear under oath, in open court
22 or in chambers before the superior court judge granting the motion: 'I do solemnly
23 swear (or affirm) that I will conduct myself as a process server truly and honestly, justly
24 and uprightly, and according to law; and that I will support the Constitution of the State
25 of Georgia and the Constitution of the United States. I further swear (or affirm) that
26 I will not serve any papers or process in any action where I have a financial or personal
27 interest in the outcome of the matter or where any person to whom I am related by
28 blood or marriage has such an interest.'

29 (3) A permanent process server shall be required to renew his or her registration every
30 two years in a manner and at such time as required by the Judicial Council of Georgia.
31 Any permanent process server failing to renew his or her registration as required by the
32 rules and regulations of the council shall be removed from the council's registry and shall
33 no longer be approved to serve as a permanent process server.

34 (4) A permanent process server may be removed from the registry at any time, in
35 accordance with procedures established by the Administrative Office of the Courts."

SECTION 4.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

SECTION 5.

This Act shall become effective on July 1, 2006.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.